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Valley Center Broadcasting **RECEIVED**

265 W. Menlo Avenue

Fresno, CA 93704

(209)435-6278

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November 28, 1994

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

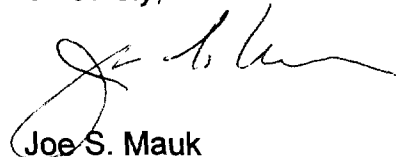
**RE: Docket No. 94-101
RM-8510
FM Table of Allotments
Kerman, California**

Dear Mr. Caton:

Transmitted herewith are an original and four copies of a **REPLY TO COMMENTS AND COUNTERPROPOSAL** in the above-referenced rulemaking proceeding.

Should any further information be desired, feel free to contact us.

Sincerely,


Joe S. Mauk

Enclosures
JSM/rw

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Before The

Federal Communications Commission

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Washington, D.C. 20554

In the Matter Of)
)
Amendment of Section 73.202(b)) MM Docket No. 94-101
Table of Allotments,) RM-8510
FM Broadcast Stations.)
(Kerman, California))

TO: Chief, Allocations Branch

Reply to Comments and Counterproposal

Valley Center Broadcasting ("Valley Center"), pursuant to Section 1.420 of the Commission's Rules, hereby submits its reply to the Comments and Counter Proposal of EBE Communications Limited Partnership ("EBE") in the above referenced rulemaking proceeding.

1. The Commission issued a Notice of Proposed Rulemaking ("NPRM") DA 94-992, released September 20, 1994, which proposed to add Channel 252A at Kerman, California, to the Table of Allotments. EBE subsequently filed comments and a counterproposal to the NPRM.

2. EBE's counterproposal is to substitute alternate FM Channel 237A with site restrictions in place of the original proposal, FM channel 252A. EBE states that on November 14, 1994 they filed a construction permit application, that is mutually exclusive with the NPRM, to move from their licensed transmitter site at Meadow Lakes, CA to a site that is located closer to their city of license, Fresno, California.

3. EBE goes on to state further, that broadcasting from the site proposed in their November 14, 1994 construction permit application will provide Fresno with better reception and would serve the public interest. This is a largely self serving and make weight argument, since both proposals will serve the public interest.

4. Valley Center is opposed to the counter proposal advanced by EBE. The counter proposal will injure future applicants. The Commission has stated previously that "[the staff will also attempt to resolve conflicts between a rulemaking petition and a later filed FM application by imposing a site restriction on the proposal in the petition, or by allotting an alternate channel for that proposed in the petition, whenever it is possible to do so without prejudice to a timely filed rulemaking petition or FM application.]" *Conflicts Between Applicants and Petitions for Rule Making to amend the FM Table of Allotments*, 8 FCC Rcd. 4743, 4745 n.12 (1993). In this instance, EBE's counterproposal is attempting to impose both a site restriction and an alternate channel. The Commission's policy in plain English says imposition of a site restriction or an

alternate channel, not both. Adopting EBE's proposal will prejudice future applicants for the Kerman allotment and will only trade off service to the public between an under served community and a community with over 22 licensed aural services and 5 visual services.

5. The counterproposed channel is site restricted 11 kilometers west-southwest of Kerman. This site restriction will affect the financial viability of the proposed FM radio station. It will drastically reduce the flexibility of future applicants in finding a transmitter site. It will significantly increase the construction costs of the future licensee since a new tower structure and physical plant will be required. The allotting of FM channel 252A will allow transmitter facilities to be located on one of two existing tower structures, FM channel 237A cannot be located at an existing tower structure. Future applicants will be subject to land use restrictions, zoning issues, environmental concerns, will cause agricultural land to be taken out of production in violation of the State of California's Environmental Quality Act, California Native Species Act, and place another aviation hazard in an area used extensively by aircraft for low level crop dusting flights.

6. Allotment of FM channel 237A to Kerman, California, as advanced in the EBE counter proposal will necessitate that the transmitter site be located in an area that may be environmentally sensitive. The reference coordinates are adjacent to the Kerman Ecological Reserve that supports several endangered species that are Federally protected, including but not limited to, the San Joaquin Kit Fox, Bluntnose Leopard Lizard, Fairy Shrimp (a group species that live in seasonal vernal pools that are located in the area) and the Fresno Kangaroo Rat. Again, allotting FM channel 252A to Kerman, California would allow the use of one of two existing antenna/transmitter sites and avoid the environmental issues.

7. EBE points out that population covered by their proposed transmitter site move will increase and that the result will be a more efficient use of spectrum. However, EBE conveniently fails to point out that the counterproposed channel at Kerman, FM channel 237A will cause a decrease the population covered because the transmitter site for FM channel 237A would be moved further away from a more densely populated area into a more sparsely populated area and use of FM Channel 237A will also result in less efficient spectrum utilization than if FM channel 252A were allocated. Thus, Substitution of FM Channel 237A at Kerman, California will further impact and injure the viability of the proposed radio station.

8. EBE has had 4 years to move their transmitter to the site proposed in their just filed construction permit application. The site proposed in their construction permit application filed November 14, 1994, known as Owens Mountain, has supported the facilities of FM station KSXY since February 1990 and a site similar to Owens Mountain has been used by FM station KTHT since 1971. Likewise, the coverage afforded by radio transmitters located at Meadow Lakes has also been a known quantity for over 20 years. Yet EBE filed a construction permit application (BPH 890915IH) to move their transmitter site to Meadow Lakes and subsequently, in 1991 did construct a transmitter facility at Meadow Lakes. In the 1989 construction permit application (BPH 890915IH), EBE went to great lengths to advance an alternative propagation model that demonstrated the entire area of the City of Fresno is within the KNAX 70 dBu contour using the Meadow Lakes transmitter site. *Engineering Report, Construction Permit Application BPH 890915IH*. EBE also conducted extensive FM field intensity measurements after the Meadow Lakes transmitter site was operational and determined that measured signal strengths supported the alternative propagation model advanced in the construction permit

application. These signal strength measurements were conducted under the direction of the consulting engineering firm of Hatfield and Dawson. Further, five additional radio stations, KKDJ, KOQO, KFCF, KFNO and KVPR; all licensed to the City of Fresno, currently use Meadow Lakes as their transmitter site.

9. If EBE was dissatisfied with the coverage afforded by KNAX's Meadow Lakes transmitter site, why did it take four years to file a construction permit to relocate to Owens Mountain? The EBE counterproposal is a thinly veiled attempt to attain greater interference protection than afforded by the Commission's Rules and to thwart the addition of another aural broadcast service. There are twelve FM channels and ten AM channels licensed to Fresno, California. There presently is only one FM channel and there are no AM channels at Kerman, California. The NPRM will add only the second aural service to Kerman. The substitution of FM channel 232A with the attendant site restrictions will seriously cripple any potential applicant due to the financial burden of substantially increased construction costs. The public's interest would be better served by allotting FM channel 252A to Kerman, California.

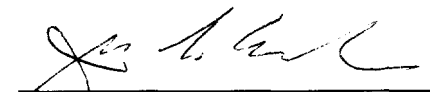
10. Valley Center would fully support the substitution of an alternate FM channel at Kerman, California if the substitute channel were equal to the original proposal, FM channel 252A. FM channel 232A is not equal to FM channel 252A by any stretch of the imagination. EBE has a licensed facility that provides the required coverage of the City of Fresno. A second aural service at Kerman, California should not be sacrificed. EBE has had more than enough time to relocate their transmitter site and now that at least two entities have expressed an interest in providing the second aural service, EBE has decided to move. Future applicants should not be hamstrung due to EBE's lethargy.

Valley Center Broadcasting respectfully requests that the Commission reject the counterproposal of EBE Communications Limited Partnership and that the Table of FM Allotments be amended as follows:

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Kerman, CA	232A	232A, 252A

The undersigned states that all of the representations are true to the best of my knowledge.

Respectfully Submitted,


 Joe S. Mauk

Date: November 26, 1994

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CERTIFICATE OF SERVICE

The undersigned, hereby certifies that the foregoing document was mailed this date by First Class Mail, postage prepaid, to the following:

EBE Communications Limited Partnerships
%Haley Bader and Potts
Melodie A. Virtue
4350 North Fairfax Dr. Suite #900
Arlington, Virginia 22203-1633



Joe S. Mauk
Valley Center Broadcasting
November 28, 1994